



Post Office Box 752  
Columbia, South Carolina 29202-0752  
Telephone: 803/401-2900  
Fax: 803/254-1731  
E-mail: caroline.watson@bellsouth.com  
IPager: cwatson2@imcingular.com

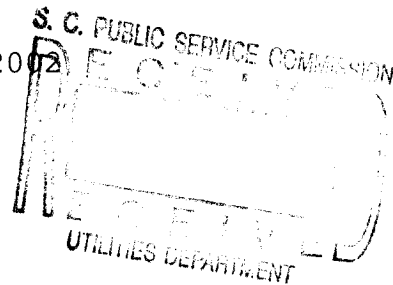
129625

22

**Caroline N. Watson**  
General Counsel - South Carolina

Street Address:  
1600 Williams Street, Suite 5200  
Columbia, South Carolina 29201

June 28, 2002



The Honorable Gary E. Walsh  
Executive Director  
Public Service Commission of SC  
Post Office Drawer 11649  
Columbia, South Carolina 29211

Re: Application of BellSouth Telecommunications, Inc. to  
Provide In-Region InterLATA Services Pursuant to  
Section 271 of the Telecommunications Act of 1996  
Docket No. 2001-209-C

Dear Mr. Walsh:

Enclosed please find for filing an original and 15 copies  
of BellSouth's Response to Southeastern Competitive Carriers  
Association's Petition for Reconsideration or Clarification of  
Order No. 2002-396. By copy of this letter, I am serving all  
parties of record with a copy of this pleading as indicated on  
the attached Certificate of Service.

Sincerely,

Caroline N. Watson

CNW/nml  
Enclosure  
cc: All Parties of Record

FILED  
6/28/02

ACCEPTED  
Legal 6/28/02 JMB

BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

In Re: Application of BellSouth )  
Telecommunications, Inc. To Provide )  
In-Region InterLATA Services Pursuant ) DOCKET NO.  
Section 271 of the Telecommunications ) 2001-209-C  
Act of 1996 )

BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE TO  
SOUTHEASTERN COMPETITIVE CARRIERS ASSOCIATION'S PETITION  
FOR RECONSIDERATION OR CLARIFICATION OF ORDER NO. 2002-396

BellSouth Telecommunications, Inc. ("BellSouth")  
hereby files its Response to the Petition for  
Reconsideration or Clarification of Order No. 2002-396 of  
Southeastern Competitive Carriers Association ("SECCA") and  
states as follows:

SECCA complains about two things in its Petition: (1)  
In addressing the issue of CCP violations raised by  
BellSouth's ... 396 does not  
accurately re ... sion to deny  
BellSouth's r ... (2) The Order's  
requirement t ... llSouth meet to  
address the C ... g other parties  
violates cer ... Administrative  
Procedures Act ... ese concerns as  
follows:

*Legal has  
retained (2)  
copies*

S. C. PUBLIC SERVICE COMMISSION  
RECEIVED  
JUL 1 2002  
UTILITIES DEPARTMENT

First, in response to SECCA's assertion that the Order is contrary to the Motion, BellSouth disagrees that the directive to study the issue and report back to the Commission any resolution is inconsistent with the denial of BellSouth's motion for reconsideration. Although the Commission refused to change its decision at this time, the language in the Order simply reflects the caveat that the Commission will revisit the issue.

The directive that the parties shall report back "prior to the FCC acting on BellSouth's application for South Carolina" is simply an acknowledgement that it will reconsider the issue of Tier 1 and Tier 2 penalties for CCP violations based upon a proposal being submitted. Should the Commission wish to make its decision crystal clear for the benefit of SECCA, it may insert the words, "The Motion by BellSouth is denied but..." before the sentence "[t]he issue should receive further study."

Second, SECCA's opinion that the Order's direction to the Commission Staff and BellSouth to enter into discussion regarding this issue violates Section 1-23-360, SC Code Ann. (1986) is simply incorrect.

The Telecommunications Act of 1996 did not require a penalty plan in order to be allowed into the long distance market by the FCC. To allay fears of backsliding on its

part, BellSouth voluntarily introduced its plan. The Commission has determined that the penalty plan is voluntary on the part of BellSouth and BellSouth has the right to modify the plan. In the ITC DeltaCom arbitration case, Docket No. 1999-690, dated October 4, 1999, the Commission ruled: "This Commission has previously found in this order as well as in a previous arbitration order (See Order No. 97-189, Docket No. 96-358-C, March 10, 1997, at 10) that it lacks jurisdiction to impose penalties."

SECCA's position, that the ex parte law in South Carolina restricts communications about the development of a voluntary penalty plan prior to BellSouth submitting it to the Commission for any action, is simply not the law in South Carolina.

Further, the ex parte rule that SECCA claims has been violated by the Commission's Order does not apply since the ex parte rules prohibit certain communications only in "contested cases." SC Code Section 1-23-360. Although all cases with opposing parties are contentious, a "contested" case is a legal term that is specifically defined in Section 1-23-310(2). In order to be a contested case, there are specific requirements that are not present in this case:

- (1) a party must have a right to appeal the decision. Section 1-23-380. Clearly, no party believes there is a right to appeal the Commission's decision in this matter.
- (2) there must be a hearing required by law. We certainly believe the Commission took the appropriate action to conduct a hearing to allow all parties an opportunity to participate and be heard, but there simply is no such legal requirement under federal or state law. Section 1-23-310(3).
- (3) the case must involve a determination in which the legal rights, duties, or privileges of a party is required by law to be determined after hearing. Section 1-23-310(3). The sole legal directive in this matter is that, if a company applies to the FCC requesting the FCC's approval to enter the long distance market, the FCC, in rendering its decision, must "consult with the State Commissions." Federal Telecommunications Act of 1996, Section 271(d)(B)(2). The requirement cited above is simply not met.

Since these legal requirements are not present, the case does not meet the definition of "contested" case. Therefore, the prohibition on ex parte requirements cited by SECCA contained in Section 1-23-360 does not apply.

There are numerous additional legal reasons that SECCA's argument is groundless. The most fundamental reason is that, in order for the Section's restrictions on ex parte communications to apply, there must be an issue before the Commission that requires rendering a decision. In this circumstance, the Commission has made its decision

and refused to reconsider it, as SECCA has represented. That decision is final. What the Commission has directed BellSouth to do is to study the issue further and bring this issue back before the Commission at a specified time. At that point in time, the Commission will consider the matter.

For all the reasons cited above, there is no improper ex parte communication denoted in the Commission's Order. It is BellSouth's understanding that the Commission's Order directed the Commission Staff to discuss the matter with BellSouth and, if BellSouth failed to submit a proposal, the Commission Staff would have been obligated to bring the matter back before the Commission.

BellSouth understands the directive by the Commission and submits that it will file a proposal for the CCP penalty plan as directed by the Commission within the specified timeframe.

For these reasons, BellSouth respectfully requests that the Petition for Reconsideration or Clarification filed by SECCA be denied, or in the alternative, changed as noted herein.

This 28<sup>th</sup> day of June, 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.



---

Caroline N. Watson  
BellSouth Telecommunications, Inc.  
Suite 5200 - 1600 Williams Street  
Columbia, South Carolina 29201  
(803) 401-2900

Lisa S. Foshee  
BellSouth Telecommunications, Inc.  
Suite 4300 - BellSouth Center  
675 West Peachtree St., N.E.  
Atlanta, Georgia 30375  
(404) 335-0729

William F. Austin  
AUSTIN, LEWIS & ROGERS  
Post Office Box 11716  
Columbia, South Carolina 29211  
(803) 256-4000

ATTORNEYS FOR BELLSOUTH

STATE OF SOUTH CAROLINA                    )  
  ) CERTIFICATE OF SERVICE  
COUNTY OF RICHLAND                        )

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused BellSouth Telecommunications, Inc.'s Response to Southeastern Competitive Carriers Association's Petition for Reconsideration or Clarification of Order No. 2002-396 in Docket No. 2001-209-C to be served by the method indicated below upon the following this June 28, 2002:

Elliott F. Elam, Jr., Esquire  
S. C. Department of Consumer Affairs  
3600 Forest Drive, 3<sup>rd</sup> Floor  
Post Office Box 5757  
Columbia, South Carolina 29250-5757  
(Consumer Advocate)  
**(U. S. Mail and Electronic Mail)**

L. Hunter Limbaugh, Esquire  
1426 Main Street  
Suite 1301  
Columbia, South Carolina 29201  
(AT&T)  
**(U. S. Mail and Electronic Mail)**

Florence P. Belser, Esquire  
Deputy General Counsel  
S. C. Public Service Commission  
Post Office Box 11649  
Columbia, South Carolina 29211  
(PSC Staff)  
**(U. S. Mail and Electronic Mail)**



Russell B. Shetterly, Esquire  
Haynsworth Sinkler Boyd, P.A.  
1201 Main Street  
Suite 2400  
Columbia, South Carolina 29201-3226  
(Knology of Charleston and Knology of  
South Carolina, Inc.)  
**(U. S. Mail and Electronic Mail)**

Darra W. Cothran, Esquire  
Woodward, Cothran & Herndon  
1200 Main Street, 6th Floor  
Post Office Box 12399  
Columbia, South Carolina 29211  
(MCI WorldCom Network Service, Inc.  
MCI WorldCom Communications and  
MCI metro Access Transmission Services,  
Inc.)  
**(U. S. Mail and Electronic Mail)**

John F. Beach, Esquire  
John J. Pringle, Jr., Esquire  
Beach Law Firm  
1321 Lady Street, Suite 310  
Post Office Box 11547  
Columbia, South Carolina 29211-1547  
(Resort Hospitality Services, Inc.,  
NuVox Communications, Inc. and AIN)  
**(U. S. Mail and Electronic Mail)**

Marsha A. Ward, Esquire  
Kennard B. Woods, Esquire  
MCI WorldCom, Inc.  
Law and Public Policy  
6 Concourse Parkway, Suite 3200  
Atlanta, Georgia 30328  
(MCI)  
**(U. S. Mail and Electronic Mail)**

Frank R. Ellerbe, Esquire  
Bonnie D. Shealy, Esquire  
Robinson, McFadden & Moore, P.C.  
1901 Main Street, Suite 1500  
Post Office Box 944  
Columbia, South Carolina 29202  
(NewSouth Communications Corp., SCCTA  
and SECCA and KMC Telecom III, Inc.)  
**(U. S. Mail and Electronic Mail)**

Genevieve Morelli  
Andrew M. Klein  
Kelley, Drye & Warren, LLP  
1200 19<sup>th</sup> Street, N.W.  
Washington, D.C. 20036  
(KMC Telecom III, Inc.)  
**(U. S. Mail and Electronic Mail)**

John D. McLaughlin, Jr.  
Director, State Government Affairs  
KMC Telecom, Inc.  
1755 North Brown Road  
Lawrenceville, GA 30043  
(KMC Telecom)  
**(U. S. Mail and Electronic Mail)**

Jack H. Derrick  
Senior Attorney  
141111 Capital Blvd.  
Wake Forest, NC 27587-5900  
(Sprint/United Telephone)  
**(U. S. Mail and Electronic Mail)**

Scott A. Elliott, Esquire  
Elliott & Elliott  
721 Olive Street  
Columbia, South Carolina 29205  
(Sprint/United Telephone)  
**(U. S. Mail and Electronic Mail)**

Marty Bocock, Esquire  
Director of Regulatory Affairs  
1122 Lady Street, Suite 1050  
Columbia, South Carolina 29201  
(Sprint/United Telephone Company)  
**(U. S. Mail and Electronic Mail)**

Faye A. Flowers, Esquire  
Parker Poe Adams & Bernstein LLP  
1201 Main Street, Suite 1450  
Columbia, South Carolina 29202  
(US LEC)  
**(U. S. Mail and Electronic Mail)**

William R. Atkinson, Esquire  
3100 Cumberland Circle  
Cumberland Center II  
Atlanta, Georgia 30339-5940  
(Sprint Communications Company L.P.)  
**(U. S. Mail and Electronic Mail)**

Andrew O. Isar  
Director - State Affairs  
7901 Skansie Avenue, Suite 240  
Gig Harbor, WA 98335  
(ASCENT)  
**(U. S. Mail and Electronic Mail)**

Nanette Edwards, Esquire  
ITC^DeltaCom Communications, Inc.  
4092 S. Memorial Parkway  
Huntsville, Alabama 25802  
**(U. S. Mail and Electronic Mail)**

Timothy Barber, Esquire  
Womble, Carlyle, Sandridge & Rice  
3300 One First Union Center  
301 South College  
Suite 3300  
Charlotte, North Carolina 20202  
(AT&T)  
**(U. S. Mail and Electronic Mail)**

Thomas Lemmer, Esquire  
McKenna & Cuneo, LLP  
370 Seventeenth Street, Suite 4800  
Denver, CO 80202  
(AT&T)  
**(U. S. Mail and Electronic Mail)**

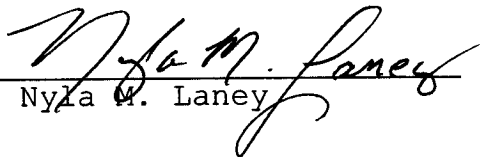
Traci Vanek, Esquire  
McKenna & Cuneo, LLP  
1900 K Street, N.W.  
Washington, DC 20006  
(AT&T)  
**(U. S. Mail and Electronic Mail)**

Tami Azorsky, Esquire  
McKenna & Cuneo, LLP  
1900 K Street, N.W.  
Washington, DC 20006  
(AT&T)  
**(U. S. Mail and Electronic Mail)**

Michael Hopkins, Esquire  
McKenna & Cuneo, LLP  
1900 K Street, N.W.  
Washington, DC 20006  
(AT&T)  
**(U. S. Mail and Electronic Mail)**

William Prescott, Esquire  
1200 Peachtree Street, N.E.  
Suite 8100  
Atlanta, Georgia 30309  
(AT&T)  
**(U. S. Mail and Electronic Mail)**

John A. Doyle, Jr., Esquire  
Parker, Poe, Adams & Bernstein, L.L.P.  
150 Fayetteville Street Mall, Suite 1400  
Raleigh, North Carolina 27602  
(US LEC of South Carolina)  
**(U. S. Mail and Electronic Mail)**

  
\_\_\_\_\_  
Nyla W. Laney